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Philippines

Agricultural Situation

Philippines Enacts Plant Variety Protection Law 2002

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Report Highlights:

The Philippines has finally set in place a law providing intellectual property protection to new plant varieties by the passage of Republic Act. No. 9168 entitled "An Act to Provide Protection to New Plant Varieties, Establishing a National Plant Variety Protection Board and for other Purposes." Together with the recently issued guidelines for GM plants and plant products, the law provides a conducive policy environment for the full commercialization of plant varieties developed through genetic engineering (refer to RP2018).

Includes PSD changes: No
Includes Trade Matrix: No
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President Gloria Macapagal-Arroyo signed into law last June 7, 2002 Republic Act 9168 (RA 9168) otherwise known as the Plant Variety Protection Act (PVPA). The enactment of this law which aims to protect and secure the exclusive rights of breeders with respect to their new plant varieties, enables the Philippines to comply with its obligations under Article 27.3.b of the WTO Trade Related Intellectual Property Rights (TRIPS) Agreement.

RA 9168 is patterned after the Union for the Protection of New Varieties of Plants (UPOV) 1991 convention. Like the UPOV 1991 convention, the law exempts plant breeders doing further research and small farmers from the grant of protection. The right of small farmers' to use and exchange farm-saved seeds is preserved. The law however, extended this right to sell produce derived from a protected variety, except when this sale is under a commercial marketing arrangement. A Board, which the law has established, will determine the specific conditions under which this exemption may be allowed, taking into consideration the nature of the plant cultivated, grown, or sown. (Note: UPOV convention allows farmers' rights to use and exchange farm-saved seeds. Selling these farm-saved seeds and products derived from a protected variety are not allowed. Endnote).

A certificate of plant variety protection is granted if a variety is deemed new, distinct, uniform, and stable. A variety is considered new if it has not been sold, offered for sale or disposed of to others for more than one year in the Philippines or more than six years for trees and vines and four years for other plants in other countries. In addition, the variety should be clearly distinguishable from any commonly known variety; sufficiently uniform in its relevant characteristics; and has stable characteristics even after repeated propagation. The certificate is valid (from the date of the grant) for twenty-five years in the case of trees and vines, and twenty years for all other types of plants.

RA 9168 also grants breeders from other countries the same treatment such that an application filed locally for plant variety protection previously granted in another country (which by treaty, convention or law affords similar privileges to Filipino citizens) will be issued similar protection.

The law likewise creates a National Plant Variety Protection Board which will be composed of the secretaries of the Departments of Agriculture (DA) and Science and Technology (DOST) as chairman and co-chairman, respectively. The Board will be tasked with overseeing the effective implementation of the law. The National Seed Industry Council (NSIC) will act as the interim Board until the latter is fully organized. The PVP Board has up to June 7, 2003 to institutionalize a database on plant varieties (which form basis for determining newness), and up to January 21, 2003 to issue the implementing rules.

With the passage of RA 9168, the Philippines moves towards full compliance with its obligations under the WTO-TRIPS agreement. The biotech commercialization guidelines provide the administrative rules that will allow seed companies to market their biotech seeds and planting materials while the PVP law ensures fair returns from their investments to this technological innovation. In both cases, the Bureau of Plant Industry (BPI) is the main agency involved in implementing biotech commercialization rules and IPR law enforcement.